

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JASON SANCHEZ**

**Plaintiff,**

**Case No: 2:25-cv-00226-MIS-GJF**

**vs.**

**MIKE GALLAGHER,  
individually and in his  
official capacity, and  
EDDY COUNTY BOARD  
OF COMMISSIONERS,**

**Defendants.**

**SUR-REPLY IN FURTHER RESPONSE TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff files this Sur-Reply in Further Response to Defendants' Motion for Summary Judgment. This Sur-Reply does not seek to address all of Defendants' (incorrect) arguments from their Reply (Dkt. #13) and will instead address only new arguments and evidence inappropriately raised by Defendants for the first time in their Reply.

**A. Objection to late-filed evidence.**

With their Reply brief, Defendants filed a new affidavit attaching three screenshots from Facebook.<sup>1</sup> It is unclear why Defendants attach this new evidence when it does not seem to help their argument, but out of caution, Plaintiff objects to the late inclusion of these exhibits. The screenshots all pre-date Defendants' Motion for Summary Judgment, and they could have been included with the initial Motion. To the extent the Court believes the screenshots help Defendants' argument, Plaintiff has been prejudiced and therefore seeks their exclusion.

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<sup>1</sup> Dkt. #13-1.

**B. Defendants' late-filed evidence does not support their argument and in fact helps Plaintiff.**

Defendants cite their late-filed evidence for the proposition that, as of March 3, 2025, "Plaintiff was aware that the link the County previously posted for public comments on Facebook had been removed prior to the Commission Meeting on March 4, 2025." Reply at 2. But this proposition is completely consistent with Plaintiff's Complaint, his summary judgment response, and his Declaration. *I.e.*, Plaintiff submitted his comment on February 25; Defendants saw the comment on February 26 and decided they did not want to read that comment due to the viewpoint expressed therein; and also on February 26, Defendants decided to (actually) take down the form by which people may submit comments, which Plaintiff realized Defendants did on March 3.

Defendants also cite the new evidence for the proposition that the "link to the form was completely removed as of February 26, 2025, and was not contained in the County's Facebook post prior to the March 4, 2025, Commission Meeting." Reply at 10. Again, this is consistent with Plaintiff's Complaint, his response, and his Declaration, and it is consistent with the very reasonable inference that Gallagher did not read Plaintiff's comment because of the comment's viewpoint.

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Ultimately, nothing in Defendants' Reply changes the facts that (1) Plaintiff submitted a comment to be read at a Board meeting, through a form available on Defendants' website, (2) the comment was critical of Eddy County law enforcement; (3) Defendants were aware of Plaintiff's comment; and (4) Defendants opted not to read Plaintiff's comment at the March 4, 2025 Board meeting. A reasonable inference from the summary judgment record is that Gallagher elected not to read the comment due to his disagreement with the viewpoint expressed by Plaintiff. Gallagher's credibility in this regard is an issue for the jury, not for summary judgment. Even if

Defendants' late-filed documents are considered, Defendants have failed to provide any evidence of a policy against reading written, submitted comments at Eddy County Board meetings.

For these reasons and those in Plaintiff's Response, Defendants' Motion should be denied.

Date: May 5, 2025

Respectfully submitted,

WALDO GUBERNICK  
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/s/ Curtis Waldo

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2025, I caused the foregoing document to be filed with the Court and served on counsel for all parties.

/s/ Curtis Waldo

Curtis Waldo